

GREENBERG TRAURIG LLP

E. Patrick Ellisen (SBN 142033) (ellisenp@gtlaw.com)
James W. Soong (SBN196092) (soongj@gtlaw.com)
Daniel T. McCloskey (SBN191944)
(mccloskeyd@gtlaw.com)
1900 University Avenue 5th Floor
East Palo Alto, CA 94303
Telephone: (650) 328-8500; Facsimile: (650) 328-8508

GREENBERG TRAURIG LLP

Herbert H. Finn (admitted pro hac vice) (finnh@gtlaw.com)
Cameron M. Nelson (admitted pro hac vice) (nelsonc@gtlaw.com)
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
Telephone: (312) 456-8400; Facsimile: (312) 456-8435

GREENBERG TRAURIG LLP

Valerie W. Ho (SBN 200505) (hov@gtlaw.com)
2450 Colorado Avenue, Suite 400E
Santa Monica, CA 90404
Telephone: (310) 586-7700; Facsimile: (310) 586-7800

Attorneys for Defendant and Counterclaimant

PRIMAX ELECTRONICS LTD. and Third-Party Plaintiff **POLARIS
ELECTRONICS, INC.**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KYE SYSTEMS AMERICA CORP., a
California corporation,

Plaintiff,

v.

PRIMAX ELECTRONICS LTD., a
Taiwanese corporation,

Defendant.

and related Counterclaims and Third-Party
Claims

N.D. Cal. Case No. 5:11-cv-80121-LHK-HRL
(Misc)

C.D. Cal. Case No. 2:10-cv-04481 RGK (FFMx)

**PRIMAX ELECTRONICS LTD.'S NOTICE
OF MOTION TO COMPEL MOUNT,
SPELMAN & FINGERMAN, P.C. TO
PRODUCE DOCUMENTS AND
PRIVILEGE LOG PURSUANT TO
SUBPOENA**

Date: July 12, 2011

Time: 10:00 a.m.

Place: Courtroom 2 - 5th Floor

Before: Magistrate Judge Howard R. Lloyd

Trial Date: November 1, 2011

Pre-Trial Conference Date: Oct 17, 2011

FILED
JUN 02 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF MOTION

TO MOUNT SPELMAN & FINGERMAN :

PLEASE TAKE NOTICE that on July 12, 2011 at 10:00 a.m., or as soon thereafter as this matter may be heard before Magistrate Judge Howard R. Lloyd in Courtroom 2, 5th Floor of the above-entitled court located at 280 South 1st Street, San Jose, CA 95113, pursuant to Civil L.R. 7-1(c), Defendant, Counterclaimant and Third-Party Plaintiff, Primax Electronics Ltd. and Third-Party Plaintiff, Polaris Electronics, Inc. (collectively referred to hereinafter as "Primax") will, and hereby does, move pursuant to Fed. R. Civ. P. 37 for an order compelling third-party Mount, Spelman & Fingerman, P.C. ("MS&F") to produce documents and a privilege log pursuant to a subpoena under Fed. R. Civ. P. 45.

Pursuant to Civil L.R. 37-1(a) and Federal Rule of Civil Procedure 37(a)(1), prior to filing the instant motion, Primax's counsel attempted to confer and did confer with MS&F's counsel concerning the disputed issues. Despite these good faith efforts, the parties have been unable to resolve the differences identified in the instant motion.

Primax's motion is made pursuant to Fed. R. Civ. P. 45, 34, and Civil L.R. 37, and on the grounds that MS&F has: 1) failed to produce any documents in response to the subpoena despite admitting that responsive documents exist; 2) has failed to properly assert an objection based upon attorney-client privilege or work product immunity instead asserting a single blanket, non-specific objection based on attorney-client privilege and attorney work product protection as to all requests; 3) has failed to provide any privilege log despite raising the issue of privilege; and **4) has failed to maintain documents being sought and egregiously engaged in spoliation by divesting themselves of responsive documents after receipt of the subpoena.** This motion is based on this notice, the accompanying memorandum of points and authorities, the Declaration of David J. Perez, the pleadings and papers on file in the instant action, and such other evidence and argument as may be presented at the hearing on the motion.

1 Dated: June 2, 2011

GREENBERG TRAURIG, LLP

2
3
4 By: 

E. Patrick Ellisen

5
6 Attorneys for Defendant and Counterclaimant,
7 PRIMAX ELECTRONICS LTD., and Third-
8 Party Plaintiff, POLARIS ELECTRONICS, INC.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28